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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ELISHA SHEPHERD,)	
)	
Plaintiff,)	
)	
v.)	
)	
MILTON J. JAKEWAY, and)	
UNITED STATES OF AMERICA,)	
)	Case No. 3:01-cv-333 JKS
Defendants.)	

**REPLY TO OPPOSITION TO
MOTION FOR AWARD OF ATTORNEY FEES**

COMES NOW Elisha Shepherd, through her attorneys, and replies to the Defendants' opposition to her motion for an award of Attorney Fees.

The Plaintiff seeks an award of attorney's fees based in part on the Defendants' bad faith conduct, including their bad faith conduct of their defense in the captioned case. The sum of the Defendants' argument is that attorneys fees are never available to the Plaintiff in the present case under any circumstances.

The Defendants' argument ignores binding authority in this jurisdiction in found in Lauritzen v. Lehman, 736 F.2d 550, 559 (9th Cir. 1984), which held:

Lauritzen also sought fees under section 2412(b) based on the "bad faith" exception to the common law rule barring fee awards. The district court denied this request on the grounds that the government's litigation conduct did not demonstrate bad faith. 546 F.Supp. at 1227 n. 9. Because recovery under the bad faith exception may be based on the actions that led to a law suit as well as the conduct during litigation, McQuiston v. Marsh, 707 F.2d 1082, 1086 (9th Cir. 1983), the district court on remand should reconsider this issue to determine if the Navy's prelitigation conduct justifies a fee award. (Footnote omitted.)

The Defendants do not dispute the allegations of bad faith in the manner in which the United States Justice Department litigated the captioned case on behalf of the United States and Milton Jakeway. The Defendants also do not dispute that it was bad faith in and of itself for the government, instead of protecting Elisha Shepherd from the violation of her clearly established constitutional right to be free from having a government employee, acting in the scope of his employment as a federal law enforcement official, defended the unlawful conduct of Milton Jakeway.

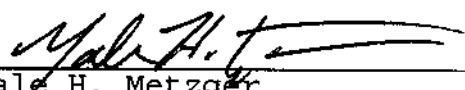
If the Justice Department had been acting in good faith, it would have been representing the interests of Elisha Shepherd as the victim of Milton Jakeway's illegal search - not the Milton Jakeway who broke the law. It is only fair under the circumstances that if the United States is to pay for legal representation for Milton Jakeway as one who breaks the law, that it also pay for the legal representation of Elisha Shepherd as the victim of Milton Jakeway's illegal conduct. Otherwise, the Court sends the message to the law enforcement community that they have a free pass to violate the constitutional rights of anyone who cannot afford to vindicate those rights, and the

lawbreakers will have the entire treasury of the United States to assist them in their illegal conduct.


Finally, the Defendants do not dispute or even question the amount of the Plaintiff's attorney's fees she seeks. The Defendants do not argue that either the amount of time spent by the Plaintiff's attorneys was unreasonable, or that the amount they charge for their time is unreasonable. As such, the Plaintiff requests that she be awarded the amount of undisputed fees she seeks.

DATED this 2ND day of May 2007 at Anchorage, Alaska.

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A true and correct copy of the foregoing was served electronically to the following this 2ND day of May 2006:

Susan Lindquist, Esq.
Federal Building & U.S. Courthouse
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